IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 31897 of 2007(Y)

PETITIONER:

HASEENA, W/O.JAMAL, AGED 31 YEARS,
THARAYIL HOUSE, VELOOPPADAM DESOM,
VARANTHARAPILLY VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS:

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1. STATE BANK OF INDIA, ALAGAPPA NAGAR
(AMBALLOOR) BRANCH, AMBALLOOR DESOM,
AMBALLOOR VILLAGE, MUKUNDAPURAM TALUK,
REP. BY ITS BRANCH MANAGER-680 302.

2. SAINABA, W/O.LATE HAMSA,
CHATHANCHIRA HOUSE, VARANTHARAPILLY PO,
MUKUNDAPURAM TALUK, THRISSUR-680 303.

3. C.H.ALI, S/O.LATE HAMSA,
CHATHANCHIRA HOUSE, VARANTHARAPILLY P.O.,
MUKUNDAPURAM TALUK, THRISSUR-680 303.

4. C.H.KUNJUMUHAMMED, S/O.LATE HAMSA,
CHATHANCHIRA HOUSE, VARANTHARAPILLY P.O.,
MUKUNDAPURAM TALUK, THRISSUR-680 303.

BY ADV. SRI.K.K.CHANDRAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J

W.P.(C). 31897/2007

Dated this the 26th day of October, 2007

JUDGMENT

The petitioner contends that she and her husband had purchased an item of property as per Ext.P1 and their transferee had purchased it from the mother-in-law of the second respondent. According to the petitioner, that property is now put for sale by the Debts Recovery Tribunal following the recovery certificate on the basis of loan transaction, which respondents 2 to 4 had availed from the first respondent, Bank.

2. According to the petitioner, the transactions in favour of her and her husband and the prior transaction were before the creation of any mortgage by respondents 2 to 4 in favour of the first respondent and that the said fact is disclosed by the encumbrance certificate. It is also her case that she had filed a suit before the Civil Court and obtained an order of injunction against the Bank.

3. The identity of the property which the petitioner claims and the quality of her claim and

preference, if any, between the title she claims and mortgage on which the Bank stands are matters which would give rise to disputed questions of facts and law. The Recovery Officer of the Debts Recovery Tribunal are the authorities before whom the said issues could be raised in terms of the provisions of second schedule to the Income Tax Act. On the availability of such facts alternative remedy and also appeal from any decision on those proceedings, I am not inclined to entertain this writ petition at this point of time.

Under such circumstances, this writ petition is dismissed without prejudice to contentions, relegating the petitioner to move the Recovery Officer for appropriate relief, in accordance with law.

THOTTATHIL B. RADHAKRISHNAN
Judge

mrcs